

Remarks/Arguments

Applicants have received and carefully reviewed the Office Action mailed March 30, 2004, setting a three-month shortened statutory period for response ending June 30, 2004. Claims 1-20 remain pending, and claims 11, 12, 14, 15 and 19 have been amended. Reconsideration and reexamination are respectfully requested.

As a preliminary matter, Applicants note that a PTO Form 1449 was filed on October 31, 2003. However, Applicants did not receive an initialed copy of the PTO Form 1449 with the outstanding Office Action. ***Applicants respectfully request that an initialed copy of the FORM-1449 be provided to Applicants in due course.***

In paragraph 3 of the Office Action, the Examiner rejected claims 11-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the claim(s) contains subject matter, notably “data packets”, which are not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicants respectfully disagree. Applicants believe that one of ordinary skill in the art would clearly understand the term “data packet”, and that the specification reasonably conveys that the inventors had possession of the concept of “data packets”. For example, in Figure 7 of the present specification, data packets are shown having a synchronization component 57, a data component 58, and a channel transfer component 59. Despite the foregoing, and in the spirit of cooperation, Applicants have amended claims 11, 12, 14, 15, and 19 to remove the term “packet” and use only the term “data”, which broadens the claims, as a “data packet” is merely a form of “data”. In view of the foregoing, it is believed that the 35 U.S.C. § 112, first paragraph, rejection is rendered moot.

In paragraph 5 of the Office Action, claims 1-3, 6, and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over McNair et al., U.S. Patent No. 5,595,342, in view of Hooper et al., U.S. Patent No. 5,734,980. In support of the combination, the Examiner states the following:

McNair et al. fail to disclose a portion of the frequency range is more commonly used than other portion of the frequency range by devices.

Hooper et al. disclose a portion of the frequency range is more commonly used than other portion of the frequency range by devices (see col. 1 lines 22-24, col. 1 lines 54-55). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of McNair et al. with the above teaching of Hooper et al. in order to provide a device that is programmed with a default frequency to use with local system.

(Office Action, paragraph 5).

Applicants must respectfully disagree. McNair et al. appears to suggest using frequency hopping to allow data to be sent on three separate channels. Figure 3 of McNair et al. appears to show the same data "A" being sent at each of three frequencies designated as channel 1, channel 2 and channel 3 - at different times. As the Examiner acknowledges, McNair et al. clearly do not disclose or suggest a system where one of the frequencies is outside of a defined partial frequency range, wherein the defined partial frequency range includes a portion of the frequency range that is more commonly used than other portion of the frequency range by devices in or near a building.

However, the Examiner states that Hooper et al. disclose a system whereby a portion of a frequency range is more commonly used than other portions of the frequency range by devices (citing, column 1, lines 22-24, and column 1, lines 54-55). Applicants must respectfully disagree. Hooper et al. relates to enhancing the ability of a mobile cellular phone to select a system (A/B) through which wireless communications will be handled. More particularly, Hooper et al. relates to a technique for mobile cellular phone selection of a preferred wireless communication system from those available within a particular service area. Hooper et al. does not teach or suggest a system whereby a portion of a frequency range is more commonly used than other portions of the frequency range by devices, as the Examiner suggests.

The Examiner specifically cites to column 1, lines 22-24 and column 1, lines 54-55 of Hooper et al. This portion of Hooper et al. states:

In order to transmit or receive wireless communications, a mobile terminal must exchange a series of messages with a local service provider or "system". In the past, the ability of a mobile terminal to select a system

with which wireless communications are to be established has been quite limited. Furthermore, as only one or two systems were available in a geographical area, the industry rarely perceived a need to equip mobile terminals with any sophisticated system selectivity features. For example, all "cellular" communication systems operate within a relatively narrow frequency band commonly referred to as the 800 MHz frequency band. Two systems operate at different frequencies within this band--the "A" cellular system and the "B" cellular system. In a given locality, the A (or "non-wireline") cellular system is operated by a service provider specializing in cellular services while the B (or "wireline") cellular system is operated by a service provider who also offers wireline services in the locality.

When a person purchases a cellular phone, he or she subscribes with one of these service providers. The selected service provider is designated as the "home system" for the cellular phone and the phone is programmed to prefer operation at the frequency range, either A or B, at which the home system operates. Whenever the cellular phone is turned on, the phone will register with the home system. If the user "roams", i.e., turns on the cellular phone outside of the geographical area serviced by his or her home system, the cellular phone will first attempt to register with the local system, either A or B, which matches its home system. If a matching system is unavailable, the cellular phone can then attempt to register with the non-matching system.

The aforementioned selection techniques, commonly referred to as "A/B selection" and "B/A selection", respectively, presumes that it is always preferable to select one class of systems over the other. No consideration is given as to whether it would be more advantageous to select the A system when roaming in a first geographical area but avoid the A system when roaming in a second geographical area. U.S. Pat. No. 5,159,625 to Zwicker discloses a method by which a terminal is able to avoid selecting undesired systems. In Zwicker, a list of undesired systems is stored in the cellular telephone. The phone is programmed with a default preference, either A or B. Whenever the phone roams, the phone will first attempt to select the local system corresponding to its default preference. If, however, the local system corresponding to the default preference is on the list of undesired systems, the phone is then instructed to communicate with the other system.

(Emphasis Added) (Hooper et al., column 1, lines 12-60). Nothing in this passage of Hooper et al. suggest that a portion of a frequency range is more commonly used than other portions of the frequency range by devices, as the Examiner suggests. This passage merely indicates that cellular phones are programmed with a default preference for selecting either "A" cellular systems or "B" cellular system, depending on the service

provider for the cellular phone. There is no indication of whether the "A" cellular system is more commonly used than the "B" cellular system, or visa versa.

In addition, Hooper et al. state that whenever the phone roams, the phone will first attempt to select the local system corresponding to its default preference. If, however, the local system corresponding to the default preference is on a list of undesired systems, the phone is instructed to communicate with the other system. A preference for selecting one system over another does not, however, suggest transmitting signals using both systems A and B. Indeed, throughout the discussion in Hooper et al., it appears that once selected, signals are only transmitted on the selected system. While several systems may be searched, once a system is selected for communication, only that system appears to be used for communication unless the user moves into a different service region, where upon another system selection is made. As can readily be seen, nothing in Hooper et al. suggests transmitting via both System A and System B. In fact, because Hooper et al. operates in the environment of cellular telephones, avoidance of roaming charges would be an operational goal. Thus, transmission via both System A and System B would be undesirable, as this would incur additional charges since at least one of the systems would likely be considered "roaming".

In view of the foregoing, it is clear that Hooper et al. does not teach or suggest a system whereby one would transmit in two frequencies where one of the frequencies is more commonly used than other frequencies, as the Examiner suggests. As acknowledged by the Examiner, McNair et al. also fails to suggest this. As such, the combination of McNair et al. and Hooper et al. cannot render claim 1 unpatentable.

In addition, it does not seem that there is any suggestion or motivation to combine McNair et al. and Hooper et al. in the manner suggested by the Examiner. As noted above, Hooper et al. appears to select a particular system (A/B), and then transmitting signals on the selected system. If the teachings of Hooper et al. were combined with McNair et al., Hooper et al. would appear to suggest first selecting one of the three channels 1-3 of McNair et al. (see McNair et al., Figure 3), and then transmitting all data on that channel. However, this is not what claim 1 recites. In view of the foregoing, claim 1 is believed to be clearly patentable over McNair et al. in view of Hooper et al.

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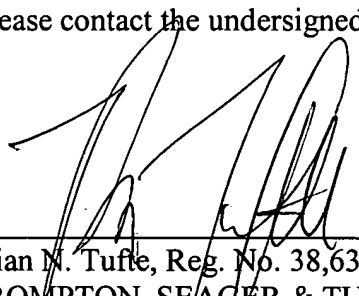
For similar and other reasons, dependent claims 2-3, 6 and 9 are also believed to be clearly patentable over McNair et al. in view of Hooper et al.

In paragraph 6 of the Office Action, claims 4-5, 7, and 9-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over McNair et al. in view of Hooper et al. and Bartel et al., U.S. Patent No. 5,898,230. In particular, the Examiner notes that the ISM band was not addressed by McNair et al., but that Bartel et al. discloses a frequency range in the ISM band. For similar reasons to those given above, as well as other reasons, dependent claims 4-5, 7, and 9-10 are believed to be clearly patentable over McNair et al. in view of Hooper et al. and Bartel et al.

Notable, claims 11-20 were only rejected under 35 U.S.C. § 112, first paragraph. Because the rejection under 35 U.S.C. § 112, first paragraph, has been successfully overcome, claims 11-20 are believed to be clearly in condition for allowance.

Reconsideration and reexamination are respectfully requested. Applicants respectfully submit that all pending claims, namely claim 1-20, are now in condition for allowance. Issuance of a notice of allowance in due course is respectfully requested. If a telephone conference would be of assistance, please contact the undersigned attorney at 612-677-9050.

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